Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Feb 29 2008, 9:45 am
Kevin S. Smith
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

WILLIAM BYER, JR.
Byer & Byer
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

MICHAEL R. FLANDERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0707-CR-550
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0506-FC-174

February 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Michael R. Flanders appeals his conviction in a bench trial of sexual misconduct with a minor, as a class C felony.[1]

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

On May 10, 2005, then-fourteen-year-old H.P. was babysitting for Flanders and his wife in their Anderson home. After returning home, the Flanderses watched a movie with H.P. Eventually, Mrs. Flanders retired for the night; H.P. and Flanders stayed in the living room to watch another movie.

During the movie, Flanders began "rubbing his leg and . . . he kept staring at [H.P.] . . . ." (Tr. 18). Flanders did not reply when H.P. asked him why he was staring at her. At some point, Flanders, who had been sitting in a chair, got up to turn on a light, which was behind the sofa on which H.P. sat. When Flanders—who was wearing pajama bottoms—got up from the chair, H.P. noticed that his penis was erect. After turning on the light, Flanders returned to his chair.

Flanders then told H.P. that the light was too bright and got up again to turn off the light. At one point, as Flanders reached for the light, "his penis brushed up against

---

[1] Ind. Code § 35-42-4-9.

[H.P.'s] forehead." (Tr. 24). H.P. could feel Flanders's penis through the cloth of his pajama bottoms.

After turning off the light, Flanders asked H.P. to unbutton her shirt. H.P. complied but did not remove either her pajama top or the tank top she wore underneath it. Flanders then began "rubbing [H.P.] on [her] arms and on [her] stomach and on [her] chest" with his hands. (Tr. 23). Although Flanders did not place his hands under H.P.'s shirts, "he was touching [H.P.'s] cleavage." (Tr. 24).

Flanders told H.P. "to make [her]self finish," which H.P. understood to mean "masturbate." (Tr. 23). Flanders took H.P.'s hand and tried to put it down her pants. H.P. refused because she was menstruating. Flanders then returned to his chair and finished watching the movie before he went to bed. H.P. spent the night at the Flanderses' home, as she often did when they returned home late.

On the morning of May 11th, H.P. returned home and sent an instant message to her friend, K.B. The message read, in part, as follows:

[H.P.]:	i have to tell you sumthing about umm. . . .
[H.P.]:	last night
[H.P.]:	hehehe
[H.P.]:	its bad

* * *

[K.B.]:	did u do it with him
[H.P.]:	no
[H.P.]:	we almost did though
[H.P.]:	i think
[H.P.]:	I don't know it was just weird
[K.B.]:	ok
[H.P.]:	i didn't know what to do
[H.P.]:	i was kinda scurred

[H.P.]: lol
[K.B.]: did u guys kiss
[H.P.]: no
[K.B.]: then what
[H.P.]: well kinda

(Flanders's Ex. 1).

That same day, H.P. went to the movies and lunch with the Flanderses. While H.P. was gone, her sister discovered H.P.'s message to K.B. and told their uncle, who also was H.P.'s guardian, about it. H.P.'s uncle printed the message and confronted H.P., who divulged that she and Flanders "'kind of did some stuff.'" (Tr. 58).

On June 14, 2005, the State charged Flanders with sexual misconduct with a minor, as a class C felony. On May 5, 2006, the State filed an amended information against Flanders, alleging him to be a repeat sexual offender.

The trial court commenced a bench trial on April 25, 2007. During the trial, H.P. testified that Flanders's action scared her. H.P.'s uncle also testified that he confronted H.P. about Flanders. The trial court found Flanders guilty as charged. On May 29, 2007, the trial court sentenced Flanders to an aggregate sentence of ten years.

DECISION

Flanders asserts that the evidence was insufficient to support his conviction.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not

> necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

Flanders invokes the "incredible dubiosity rule" in arguing that H.P.'s testimony "consist[ed] of vacillating, contradictory, and weak testimony as to the alleged conduct." Flanders's Br. 11. "Under the incredible dubiosity rule, a court will impinge on the jury's responsibility to judge the credibility of the witness only when it is confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Altes v. State*, 822 N.E.2d 1116, 1122 (Ind. Ct. App. 2005), *trans. denied*. We will reverse a conviction where a "sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence . . . ." *Id.* The application of the "incredible dubiosity" rule is rare "and is limited to cases where the sole witness' testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Id.*

Flanders characterizes H.P.'s testimony regarding his acts on the night of May 10th as "vacillating and contradictory" because H.P. also testified that she went to the movies and lunch with the Flanderses the next day. Flanders's Br. 11. Flanders contends that H.P.'s testimony that she was uncomfortable with Flanders's actions is contradicted by her testimony that she later spent time with the Flanderses.

Here, H.P.'s uncle testified for the State. Thus, the incredible dubiosity rule does not apply in this case as H.P. was not the sole witness. Furthermore, we cannot say that H.P.'s testimony was inherently dubious or inherently improbable. Rather, Flanders's argument is nothing more than an invitation to judge the credibility of H.P., which we decline to do.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.